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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BERNICE LENORA LOPEZ
16970 Colchester Way
Hacienda Heights, California 91745

Physical Therapist Assistant License
No. PTA 3456,

Respondent.

Case No. 1D 2004 63989

FIRST AMENDED ACCUSATION

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board). The Accusation in this matter was filed on November 14, 2005.
2. On or about April 19, 1994, the Board issued Physical Therapist Assistant License Number PTA 3456 to Bernice Lenora Lopez (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

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1 **JURISDICTION**

2 3. This First Amended Accusation is brought before the Board under the
3 authority of the following laws. All section references are to the Business and Professions Code
4 unless otherwise indicated.

5 4. Section 2239 of the Code provides that:

6 (a) The use or prescribing for or administering to himself or herself, of any controlled
7 substance; or the use of any of the dangerous drugs specified in section 4022, or of alcoholic
8 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any
9 other person or to the public, or to the extent that such use impairs the ability of the licensee to
10 practice medicine safely or more than one misdemeanor or any felony involving the use,
11 consumption, or self-administration of any substances referred to in this section, or any combination
12 thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of
13 such unprofessional conduct.

14 "...

15 5. Section 2609 of the Code provides that:

16 The Board shall issue, suspend, and revoke licenses and approvals to practice physical
17 therapy as provided in this chapter.

18 6. Section 2660 of the Code provides that:

19 The Board may, after the conduct of appropriate proceedings under the
20 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
21 probationary conditions upon any license, certificate, or approval issued under this chapter for
22 unprofessional conduct that includes, but is not limited to, one or any combination of the following
23 causes:

24 "...

25 "(d) Conviction of a crime which substantially relates to the qualifications, functions,
26 or duties of a physical therapist or physical therapy assistant. The record of conviction or a
27 certified copy thereof shall be conclusive evidence of that conviction. . . ."

28 "(i) Conviction of a violation of any of the provisions of this chapter or of the

1 State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or
2 assisting in or abetting the violating of, or conspiring to violate any provision or term of
3 this chapter or of the State Medical Practice Act.”

4 “(l) The commission of any fraudulent, dishonest, or corrupt act which is
5 substantially related to the qualifications, function, or duties of a physical therapist . . . ”

6 7. Section 2661 of the Code provides that:

7 A plea or verdict of guilty or a conviction following a plea of nolo contendere made
8 to a charge of a felony or of any offense which substantially relates to the qualifications, functions,
9 or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The
10 Board may order the license suspended or revoked, or may decline to issue a license, when the time
11 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
12 granting probation is made suspending the imposition of sentence, irrespective of a subsequent order
13 under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty
14 and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
15 information, or indictment.

16 8. California Code of Regulations, Title 16, section 1399.20, provides that:

17 “For the purposes of denial, suspension or revocation of a license, pursuant to
18 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered
19 to be substantially related to the qualifications, functions or duties of a person holding a
20 license under the Physical Therapy Practice Act if to a substantial degree it evidences present
21 or potential unfitness of a person to perform the functions authorized by the license or
22 approval in a manner consistent with the public health, safety or welfare. Such crimes or acts
23 shall include but not be limited to the following:

24 “(a) Violating or attempting to violate, directly or indirectly, or assisting in
25 or abetting the violation of, or conspiring to violate any provision or term of the
26 Physical Therapy Practice Act. . . .”

27 9. Section 2661.5, subdivision (a) of the Code provides that:

28 “ In any order issued in resolution of a disciplinary proceeding before the

1 Board, the Board may request the administrative law judge to direct any licensee
2 found guilty of unprofessional conduct to pay to the Board a sum not to exceed the
3 actual and reasonable costs of the investigation and prosecution of the case.”

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Conviction of Substantially-Related Crimes)

6 10. Respondent is subject to disciplinary action under sections 2660, subdivision
7 (d), and 2661 of the Code and California Code of Regulations, Title 16, section 1399.20, subdivision
8 (a), in that she was convicted of crimes substantially related to the qualifications, functions, or duties
9 of a physical therapist assistant. The circumstances are as follows:

10 I. October 27, 2004 Conviction

11 A. On or about August 27, 2004, a Whittier police officer responded to a call
12 from dispatch that Respondent needed the assistance of police to pick up her property at her
13 brother’s house. The dispatcher advised the officer that Respondent appeared to be under
14 the influence of alcohol. When the officer located Respondent in her pickup truck, she stated
15 she had already handled the situation and was leaving. The officer had difficulty
16 understanding Respondent who was slurring her words. The officer detected a strong odor
17 of alcohol on her breath, and observed that her eyes were bloodshot and watery. When asked
18 if she had anything to drink, Respondent said she had a bottle of beer. Respondent failed to
19 successfully complete the field sobriety tests. The result of her blood test indicated her blood
20 alcohol level was .19%. Respondent was arrested for driving under the influence of alcohol,
21 and driving with .08% or more blood alcohol.

22 B. On or about October 18, 2004, in Los Angeles County Superior Court
23 Complaint No. 4WH05651, Respondent was charged with driving under the influence of
24 alcohol, in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor (Count
25 1), and driving with .08% or higher blood alcohol, in violation of Vehicle Code section
26 23152, subdivision (b), a misdemeanor (Count 2).

27 C. On or about October 27, 2004, Respondent was convicted upon her plea of
28 nolo contendere to the crime of driving with .08% or higher blood alcohol (Count 2). She

1 was placed on probation for three years on a number of terms and conditions, including: pay
2 fines of \$1,260.00 or serve 13 days in county jail; complete a three-month licensed first-
3 offender alcohol program; and her driving privilege was restricted for 90 days. Count 1 of
4 the complaint was dismissed.

5 II. July 5, 2007 Conviction

6 D. On or about March 31, 2006, a California Highway Patrol (CHP) officer
7 responded to a report of a traffic collision which involved Respondent. When interviewing
8 Respondent, the CHP officer noticed a strong odor of alcohol on her breath and person.
9 Respondent's eyes were red and watery, her speech was slurred, and her demeanor was
10 uncooperative and belligerent. She had to be physically restrained from walking away from
11 the scene of the collision. Respondent failed to successfully complete the field sobriety tests.
12 The results of her breath test indicated her blood alcohol content was .120%, .099% and
13 .111%. She was arrested for driving under the influence of alcohol. When Respondent was
14 placed in the patrol vehicle, she kicked the vehicle's door and window.

15 E. On or about June 27, 2006, in Los Angeles County Superior Court Complaint
16 No. 6RI03827, Respondent was charged with driving under the influence of alcohol, in
17 violation of Vehicle Code section 23152, subdivision (a), a misdemeanor (Count 1), and
18 driving with .08% or higher blood alcohol, in violation of Vehicle Code section 23152,
19 subdivision (b), a misdemeanor (Count 2), with a prior conviction on October 27, 2004, for
20 driving with .08% or higher blood alcohol.

21 F. On or about July 5, 2007, Respondent was convicted by a jury of driving
22 under the influence of alcohol (Count 1), and driving with .08% or higher blood alcohol
23 (Count 2), and she admitted the prior conviction.

24 G. On or about July 9, 2007, Respondent was placed on probation for five years
25 on a number of terms and conditions, including: serve 30 days in county jail (with credit for
26 eight days); pay fines and assessments of \$1,611.00; perform 60 days of Cal Trans; complete
27 an 18-month licensed alcohol program; and comply with all standard DUI terms and
28 conditions of probation.

1 III. November 21, 2007 Conviction

2 H. On or about November 19, 2007, deputies from the Los Angeles County
3 Sheriff's Department responded to a call regarding a family disturbance at Respondent's
4 residence. The deputies interviewed the female victim who had lived with Respondent for
5 about five years. The victim told the deputies that Respondent appeared to have been
6 drinking alcohol when she came home. After Respondent yelled at her and pushed her, the
7 victim called 911. Respondent then hit the victim on the side of the head with her fist, and
8 pushed her. The victim told the deputies that Respondent had hit her other times in the past
9 when she was drinking. Respondent admitted that she had been drinking and that she hit the
10 victim with her fist. The deputies could smell the odor of alcohol on Respondent's breath
11 and person. She was arrested for spousal battery. While in the patrol car, Respondent yelled
12 at the victim several times saying, "I'm going to kill you when I get out, bitch."

13 I. On or about November 21, 2007, in Los Angeles County Superior Court
14 Complaint No. 7FC00459, Respondent was charged with battery against a co-habitant, in
15 violation of Penal Code section 243(e)(1), a misdemeanor (Count 1), and making a criminal
16 threat, in violation of Penal Code section 422, a misdemeanor (Count 2).

17 J. On or about November 21, 2007, Respondent was convicted upon her plea
18 of nolo contendere to battery against a co-habitant (Count 1). On or about December 17,
19 2007, she was placed on probation for three years on a number of terms and conditions,
20 including: serve 30 days in county jail (with credit for 30 days); pay a domestic violence fund
21 fine of \$400.00, a court security assessment of \$20.00, and a restitution fine of \$100.00;
22 perform 24 hours of community service; not to annoy, threaten or use force against the
23 victim; stay at least 100 yards away from the victim; and complete 52 domestic violence
24 counseling sessions. Count 2 of the complaint was dismissed.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Corrupt Acts)

27 11. Respondent is subject to disciplinary action under sections 2660, subdivision
28 (1) of the Code, in that she engaged in corrupt acts involving the misuse of alcohol, that posed a

1 danger to herself and others. The facts and circumstances are set forth in Paragraphs 9A through 9J
2 of this Accusation, and are incorporated herein by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 (Violation of Medical Practice Act and Misuse of Alcohol)

5 12. Respondent is subject to disciplinary action under sections 2660, subdivision
6 (i) and 2239 of the Code, in that she was convicted of a crime which was a violation of a provision
7 of the Medical Practices Act and that she misused alcohol. The facts and circumstances are set forth
8 in Paragraphs 9A through 9J of this Accusation, and are incorporated herein by reference.

9 **PRAYER**

10 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

12 1. Revoking or suspending Physical Therapist Assistant License Number PTA
13 3456 issued to Bernice Lenora Lopez;

14 2. Ordering Bernice Lenora Lopez to pay the Physical Therapy Board of
15 California the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 2661.5;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: June 26, 2008

19
20 Original Signed By: _____
21 STEVEN K. HARTZELL
22 Executive Officer
23 Physical Therapy Board of California
24 State of California
25 Complainant
26
27
28

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